APPENDIX A

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOUISVILLE & NASHVILLE RAILROAD COMPANY *v.* Z. D. ATKINS, ROBERT CLEMENT, and CAYCE PENTECOST, Commissioners Composing the Tennessee Public Service Commission; HONORABLE RAY BLANTON, Governor of the State of Tennessee; HONORABLE JOE C. CARR, Secretary of State of the State of Tennessee; HONORABLE RANDOLPH A. ASHLEY, JR., Attorney General of the State of Tennessee; ALICE T. STEELE, Trustee of Dickson County, Tennessee; and DICKSON COUNTY, TENNESSEE	**Civil No. 6962**

OPINION—Entered March 12, 1975

Before: WILLIAM E. MILLER, Circuit Judge, FRANK GRAY, JR., Chief District Judge, and L. CLURE MORTON, District Judge.

GRAY, Chief District Judge. In 1972, the Tennessee electorate ratified an amendment to Article II, Section 28 of the Tennessee constitution, which amendment (popularly

known as Question 3) provided, *inter alia*, for the sub-classification of real property into four classes and of tangible personal property into three classes for ad valorem tax purposes. Under this amendment, real property is to be assessed as follows: "Public Utility" property at fifty-five percent (55%) of its value; "Industrial and Commercial" property at forty percent (40%) of value; and both "Residential" and "Farm" property at twenty-five percent (25%) of value. Tangible personal property is to be assessed at a fifty-five percent rate for "Public Utility" property, thirty percent for "Industrial and Commercial" property, and five percent for all other tangible personal property. By its terms, the amendment took effect on January 1, 1973, and the constitutionality, under the Tennessee constitution, of the process by which this amendment was proposed and ratified has been upheld by the Tennessee Supreme Court. *Southern Railway Company* v. *Fowler*, 497 S. W. 2d 891 (Tenn. 1973).

To implement the provisions of the constitutional amendment, the Tennessee General Assembly enacted Chapter 226 of the Public Acts of 1973, codified as Chapter 67, Tennessee Code Annotated, and, as part of this legislation, railroad property was placed in the "Public Utility" sub-classification. T.C.A. § 67-601. Although the instant proceeding began as an attack on the amendment to Article II, Section 28, the parties, through briefs and stipulations, have narrowed the litigation to an attack on the General Assembly's designation of railroad property as "Public Utility," rather than "Industrial and Commercial," *e.g.*, an attack on the applicable portion of T.C.A. § 67-601.[1] The gist of

[1]In its "Reply Brief," the plaintiff attempted to retreat somewhat from this position, saying that it was still contending that the amendment could be held unconstitutional, as applied to railroads. This position, however, is untenable in that application to railroads is only through the statute in question, T.C.A. § 67-601, and, therefore, the scope of the principal issue is not broadened thereby.

the plaintiff's claim is that, in placing the railroads in the "Public Utility" sub-classification instead of in "Industrial and Commercial," the Tennessee Legislature acted arbitrarily and unreasonably and, thus, in violation of the Fourteenth Amendment to the Constitution.

By amendment to its complaint dated April 3, 1974, plaintiff has named as additional defendants Alice T. Steele, Trustee of Dickson County, Tennessee, and Dickson County, Tennessee, and seeks refund of certain taxes paid to Dickson County, which taxes were based on an assessment made under the statute under attack.

Before reaching the issues, however, there must first be dealt with the jurisdictional arguments interposed by the defendants, *i.e.*, that 28 U.S.C. § 1341 is a bar to this court's jurisdiction.[2] This contention is easily disposed of because the nature of this action and of the statute under attack take the case outside the purview of Section 1341. *See: Hargrave* v. *McKinney*, 413 F. 2d 320, 325-327 (5th Cir. 1969).

It follows that this same jurisdictional objection to the action against Dickson County is likewise without merit.

Turning to the merits, we begin with the well established propositions that the classification of property for purposes of taxation by the states does not offend the Fourteenth Amendment and that the states may impose higher rates on some kinds of property, specifically railroads, than on others.

> "That the states may classify property for taxation; may set up different modes of assessment, valuation, and collection; may tax some kinds of property at higher rates than others; and in making all these dif-

[2]28 U.S.C. § 1341 is as follows: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

ferentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the commonplaces of taxation and of constitutional law." *Nashville C. & St. L. Railway* v. *Browning*, 310 U. S. 362, 368 (1940).

The foregoing principles have been followed as recently as 1973, in the case of *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U. S. 356 (1973). It is clear, therefore, that the classification scheme embodied in the amendment to Article II, Section 28 is permissible under the Fourteenth Amendment, and that the legislative determination that railroads are public utilities and may be placed in the highest classification is not unconstitutional on its face.

The plaintiff seeks to avoid the seemingly overwhelming weight of precedent by asserting, under the authority of *Nashville C. & St. L. Railway Co.* v. *Walters*, 294 U. S. 413 (1935), that the change of conditions in the railroad industry has rendered invalid the factual basis of the *Browning* decision and, therefore, Tennessee's classification of railroads in the highest category. In other words, the plaintiff would have this Court apply the principles enunciated in *Browning* and related cases, but reach a different result based on allegedly different facts. Ironically, a similar argument was also made in *Browning* in connection with the Due Process issue. *Nashville C. & St. L. Railway* v. *Browning, Supra*, at p. 370.

In order for a change of circumstances to invalidate this enactment, however, the plaintiff must show that these circumstances render the difference in treatment by the State of Tennessee invidiously discriminatory. *Lehnhausen* v. *Lake Shore Auto Parts Co., Supra*, at p. 359; *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, at p. 666 (1966). In this regard, it is to be noted that the states have great

leeway, where taxation is concerned, in making classifications.

> "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." *Allied Stores of Ohio* v. *Bowers*, 358 U. S. 522, 526-527 (1959).

Viewed against this backdrop, the plaintiff's case falls far short of establishing that Tennessee's classification of railroad property as Public Utility property is "palpably arbitrary." *See: Lehnhausen* v. *Lake Shore Auto Parts Co., Supra.*

At best, the plaintiff's proof, although voluminous, tends to show only that railroads, in general, are not as profitable as before and that certain benefits and powers peculiar to them, such as the right of eminent domain, are not as useful or as used as they once were. This evidence, however persuasive and appropriate it might be if presented to a legislative body, simply does not sustain the plaintiff's claim of invidious discrimination. Given the characteristics

of railroads, it was of course eminently reasonable for the General Assembly to designate railroads as public utilities; and the economic condition of the railroad industry and its competition with others does not destroy such designation as being palpably arbitrary or invidiously discriminatory. It certainly cannot be said, on the basis of this record, that the designation complained of here was without basis. In essence, the plaintiff's case is one for the legislature, and its economic arguments are more appropriately addressed to that body, for to grant the relief requested in this case would take the Court outside the narrow confines of judicial review and would, in effect, substitute its judgment for that of the Tennessee General Assembly.

Having thus found that neither the amendment to Article II, Section 28 of the Tennessee constitution nor T.C.A. § 67-601 is violative of the plaintiff's Fourteenth Amendment rights, the Court must deny all relief prayed herein.

An appropriate Order will be entered.

APPENDIX B

CONSTITUTION OF TENNESSEE
ARTICLE II

Sec. 28. Taxable property—Valuation—Rates.—In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except the direct product of the soil in the hands of the producer, and his immediate vendee, and the entire amount of money deposited in an individual's personal or family checking or savings accounts. For purposes of taxation, property shall be classified into three classes, to wit: Real Property, Tangible Personal Property and Intangible Personal Property.

Real Property shall be classified into four (4) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) per cent of its value;

(b) Industrial and Commercial Property, to be assessed at forty (40%) per cent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) per cent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and

(d) Farm Property, to be assessed at twenty-five (25%) per cent of its value.

House trailers, mobile homes, and all other similar movable structures used for commercial, industrial, or residential purposes shall be assessed as Real Property as an improvement to the land where located.

The Legislature shall provide tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities or Towns; provided, that such tax relief for the years 1973 through 1977 shall be not less than an amount equal to the State, County, and Municipal Taxes on Five Thousand ($5,000) Dollars worth of the full market value (or One Thousand Two Hundred Fifty ($1,250) Dollars of the assessed value) of property used for a residence by any taxpayer over sixty-five (65) years of age for a period of one (1) year prior to the date of assessment; provided further, that such relief shall not extend to persons having a total annual income from all sources in excess of Four Thousand Eight Hundred ($4,800) Dollars.

The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tangible Personal Property shall be classified into three (3) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) per cent of its value;

(b) Industrial and Commercial Property, to be assessed at thirty (30%) per cent of its value; and

(c) All other Tangible Personal Property, to be assessed at five (5%) per cent of its value; provided, however, that the Legislature shall exempt Seven Thousand Five Hundred ($7,500) Dollars worth of such Tangible Personal Property which shall cover personal household goods and furnishings, wearing apparel and other such tangible property in the hands of a taxpayer.

The Legislature shall have power to classify Intangible Personal Property into subclassifications and to establish a ratio of assessment to value in each class or subclass, and

shall provide fair and equitable methods of apportionment of the value of same to this State for purposes of taxation. Banks, Insurance Companies, Loan and Investment Companies, Savings and Loan Associations, and all similar financial institutions, shall be assessed and taxed in such manner as the Legislature shall direct; provided that for the year 1973, or until such time as the Legislature may provide otherwise, the ratio of assessment to value of property presently taxed shall remain the same as provided by law for the year 1972; provided further that the taxes imposed upon such financial institutions, and paid by them, shall be in lieu of all taxes on the redeemable or cash value of all of their outstanding shares of capital stock, policies of insurance, customer savings and checking accounts, certificates of deposit, and certificates of investment, by whatever name called, including other intangible corporate property of such financial institutions.

The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

The Legislature shall have power to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct, and the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange. The portion of a Merchant's Capital used in the purchase of merchandise sold by him to non-residents and sent beyond the State, shall not be taxed at a rate higher than the ad valorem tax on property. The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

This amendment shall take effect on the first day of January, 1973. 1 Tenn. Code Anno., 1974 Cum. Supp. 98.

APPENDIX C

Tennessee Code Annotated Sec. 67-601. Definitions.—For purposes of classification of property:

* * * * * * *

(4) "Commercial and industrial tangible personal property" is hereby defined to include personal property such as goods, chattels and other articles of value which are capable of manual or physical possession, and machinery and equipment which is (1) used essentially and principally for the commercial or industrial purposes or processes for which it is intended and (2) if affixed or attached to real property, can be detached without material injury to such real property.

* * * * * * *

(7) "Public utility property" is hereby defined to include all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise: (1) railroad companies; (2) telephone, radio common carriers and telegraph companies; (3) passenger, sleeping, freight and private car companies which is hereby defined as any business, other than a railroad company, which owns, uses, furnishes, leases, rents or operates to, from, through, in or across this state or any part thereof any kind of railroad car, including but not necessarily limited to, flat, tank, refrigerator, passenger, or similar type cars; (4) street car companies; (5) power companies, whether hydroelectric, steam, atomic, or other kinds for the transmission of power; (6) express companies; (7) pipeline companies; (8) gas companies; (9) electric light companies; (10) water and/or sewerage companies; (11) motor bus and/or truck companies holding a certificate of convenience and necessity or contract hauler's permit

from the Tennessee public service commission or the interstate commerce commission and domiciled in this state and/or owning or leasing real or personal property located in this state; (12) taxicab, transit and limousine companies; (13) commercial air carrier companies holding a certificate of convenience and necessity from the Tennessee public service commission, civil aeronautics board, federal aviation administration, or any other federal or state regulatory agency; excepting those companies whose operations are solely chartered operations; and (14) water transportation carrier companies which operate boats and barges over the waterways of this state for hire and which hold a certificate of convenience and necessity as common carriers from the Tennessee public service commission, interstate commerce commission or any other federal or state regulatory agency.

(8) "Industrial and commercial property" is hereby defined to include all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club (whether public or private), nonexempt lodge, business, or similar purpose, whether conducted for profit or not. All real property which is used, or held for use, for dwelling purposes which contains two (2) or more rental units is hereby defined and shall be classified as "industrial and commercial property." 12 Tenn. Code Anno., 1974 Cum. Supp. 41.

* * * * * * *

Tennessee Code Annotated Sec. 67-611. Real property—Classification and rate of assessment.—For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as hereinafter provided:

a. Public utility property—Public utility property shall be assessed at fifty-five per cent (55%) of its value.

b. Industrial and commercial property—Industrial and commercial property shall be assessed at forty per cent (40%) of its value.

c. Residential property—Residential property shall be assessed at twenty-five per cent (25%) of its value.

d. Farm property—Farm property shall be assessed at twenty-five per cent (25%) of its value.

Where a parcel of real property is used for more than one purpose which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of: (1) immediate prior use, if any; (2) location; (3) zoning classification; provided, however, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property; (4) other legal restrictions on use; (5) availability of water, electricity, gas, sewers, street lighting, and other public services; (6) size; (7) access to public thoroughfares; and (8) any other factors relevant to a determination of the immediate most suitable economic use of the property. If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property. 12 Tenn. Code Anno., 1974 Cum. Supp. 50.

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Tennessee Code Annotated Sec. 67-616. Tangible personal property—Classification and rate of assessment.—For purposes of taxation, all tangible personal property, except inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under § 67-5801 et seq., and unused tangible personal property shall be classified according to its use and assessed as follows:

a. Public utility property—Public utility property shall be assessed at fifty-five per cent (55%) of its value.

b. Industrial and commercial property—Industrial and commercial property shall be assessed at thirty per cent (30%) of its value.

c. All other tangible personal property—All other tangible personal property shall be assessed at five per cent (5%) of its value. All tangible personal property which is not in use shall be classified according to its immediate most suitable economic use which shall be determined after consideration of the following:

(1) immediate past use, if any;
(2) nature of the property;
(3) classification of the real property upon which it is located;
(4) normal use of the property;
(5) ownership;
(6) any other factors relevant to a determination of the immediate most suitable economic use of the property. 12 Tenn. Code Anno., 1974 Cum. Supp. 53.

APPENDIX D

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOUISVILLE & NASHVILLE RAILROAD COMPANY *v.* Z. D. ATKINS, ROBERT CLEMENT, and CAYCE PENTECOST, Commissioners Composing the Tennessee Public Service Commission; HONORABLE RAY BLANTON, Governor of the State of Tennessee; HONORABLE JOE C. CARR, Secretary of State of the State of Tennessee; HONORABLE RANDOLPH A. ASHLEY, JR., Attorney General of the State of Tennessee; ALICE T. STEELE, Trustee of Dickson County, Tennessee; and DICKSON COUNTY, TENNESSEE	**Civil No. 6962**

ORDER—Entered March 12, 1975

In accordance with the opinion contemporaneously filed herewith, it is ORDERED that this case be, and it is hereby, DISMISSED.

FOR THE COURT:
(s) Frank Gray, Jr.
Chief District Judge

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOUISVILLE & NASHVILLE RAILROAD COMPANY *v.* Z. D. ATKINS, ROBERT CLEMENT, and CAYCE PENTECOST, Commissioners Composing the Tennessee Public Service Commission; HONORABLE RAY BLANTON, Governor of the State of Tennessee; HONORABLE JOE C. CARR, Secretary of State of the State of Tennessee; HONORABLE RANDOLPH A. ASHLEY, JR., Attorney General of the State of Tennessee; ALICE T. STEELE, Trustee of Dickson County, Tennessee; and DICKSON COUNTY, TENNESSEE	**Civil No. 6962**

AMENDED ORDER—Entered April 21, 1975

In accordance with the opinion filed in this cause on March 12, 1975, it is ORDERED, in lieu of the Order entered on March 12, 1975, that in accordance with said opinion of March 12, 1975 injunctive relief prayed for is DENIED and the case is hereby DISMISSED.

FOR THE COURT:
(s) Frank Gray, Jr.
Chief District Judge

APPENDIX E

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOUISVILLE & NASHVILLE RAILROAD COMPANY *v.* Z. D. ATKINS, ROBERT CLEMENT, and CAYCE PENTECOST, Commissioners Composing the Tennessee Public Service Commission; HONORABLE RAY BLANTON, Governor of the State of Tennessee; HONORABLE JOE C. CARR, Secretary of State of the State of Tennessee; HONORABLE RANDOLPH A. ASHLEY, JR., Attorney General of the State of Tennessee; ALICE T. STEELE, Trustee of Dickson County, Tennessee; and DICKSON COUNTY, TENNESSEE	**Civil No. 6962**

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 9, 1975

Notice is hereby given that Louisville & Nashville Railroad Company, the Plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order, entered in this action on March 12, 1975, as amended

by amended order entered in this action on April 21, 1975, denying injunctive relief and dismissing the complaint.

This appeal is taken pursuant to 28 U.S.C. § 1253.

(s) Philip M. Lanier By Harlan Dodson, Jr.
Philip M. Lanier
908 West Broadway
Louisville, Kentucky 40201

Hooker, Keeble, Dodson & Harris
By: (s) Harlan Dodson, Jr.
900 Nashville, Trust Building
Nashville, Tennessee 37201
Attorneys for Plaintiff

PROOF OF SERVICE

I, Harlan Dodson, Jr., one of the attorneys for Louisville & Nashville Railroad Company, Appellant herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of May, 1975, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

On Messrs. Z. D. Atkins, Robert Clement, Cayce Pentecost, Ray Blanton, Joe C. Carr, and Randolph A. Ashley, Jr., by leaving a copy thereof at the office of Everett H. Falk, Esquire, at 208 Supreme Court Building, Nashville, Tennessee, and at the office of Eugene Ward, Esquire, at Room C1-100, Cordell Hull Building, Nashville, Tennessee; and upon Defendants Alice T. Steele and Dickson County, Tennessee, by mailing a copy, in a duly addressed envelope, with first-class postage prepaid, to Ray Stuart, Esquire, Dickson, Tennessee 37055. Further such service constitutes service upon all parties required to be served.

This 9th day of May, 1975.

(s) Harlan Dodson, Jr.

PROOF OF SERVICE

I, Philip M. Lanier, one of the attorneys for Louisville and Nashville Railroad Company, Appellant herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of July, 1975, I served copies of the foregoing Jurisdictional Statement in the Supreme Court of the United States on the several parties thereto, as follows:

On Messrs. Z. D. Atkins, Robert Clement, Cayce Pentecost, Ray Blanton, Joe C. Carr, and Randolph A. Ashley, Jr., by mailing 3 copies thereof to Everett H. Falk, Esquire, at 208 Supreme Court Building, Nashville, Tennessee, and 3 copies to Eugene Ward, Esquire, at Room C1-100, Cordell Hull Building, Nashville, Tennessee; and upon Alice T. Steele and Dickson County, Tennessee, by mailing 3 copies, in a duly addressed envelope, with first-class postage prepaid, to Ray Stuart, Esquire, Dickson, Tennessee 37055. Further such service constitutes service upon all parties required to be served.

This 3rd day of July, 1975.

PHILIP M. LANIER